

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY MAY 29, 2003

SENATE BILL

No. 777

Introduced by Senator Escutia

February 21, 2003

An act to amend Sections 1102.5 and 1106 of, and to add Sections 1102.6, 1102.7, 1102.8, and 1102.9 to, the Labor Code, relating to whistleblowers.

LEGISLATIVE COUNSEL'S DIGEST

SB 777, as amended, Escutia. Whistleblowers.

Existing law prohibits employers from making, adopting, or enforcing a policy that prevents an employee from disclosing violations of a state or federal statute, or a violation or noncompliance with a state or federal regulation to a government or law enforcement agency, or from retaliating against an employee who makes a disclosure. It makes a violation punishable as a misdemeanor.

This bill would extend these protections to employees who report a violation of a state or federal rule, who refuse to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation, or who exercised these rights in former employment. This bill would prohibit an employer from retaliating against an employee for exercising any of these rights, including those provided under existing law, would add an additional civil penalty for violations, and would establish the evidentiary burdens of the parties participating in a civil action or administrative hearing involving an alleged violation of the bill's provisions. This bill would establish a "whistleblower hotline" within

the office of the Attorney General to receive telephone reports of violations of state or federal statutes, rules, or regulations, or fiduciary responsibilities, by an employer. The bill would require the Attorney General to refer calls received on this hotline to the appropriate government authority, as specified.

This bill would *also* require an employer to display, as specified, a list of an employee's rights under whistleblower laws, including the telephone number of the hotline created by the bill. ~~The bill also would impose civil penalties on certain specified corporations and limited liability companies for false reporting, as specified, of various categories of financial information.~~

Because a violation of the provisions added by this bill would constitute a misdemeanor, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that unlawful
2 activities of private corporations may result in damages not only
3 to the corporation and its shareholders and investors, but also to
4 employees of the corporation and the public at large. The damages
5 caused by unlawful activities may be prevented by the early
6 detection of corporate wrongdoing. The employees of a
7 corporation are in a unique position to report corporate
8 wrongdoing to an appropriate government or law enforcement
9 agency.
10 The Legislature finds and declares that it is the public policy of
11 the State of California to encourage employees to notify an
12 appropriate government or law enforcement agency when they
13 have reason to believe their employer is violating laws enacted for
14 the protection of corporate shareholders, investors, employees,
15 and the general public.



1 It is the intent of the Legislature to protect employees who
2 refuse to act at the direction of their employer or refuse to
3 participate in activities of an employer that would result in a
4 violation of law.

5 SEC. 2. Section 1102.5 of the Labor Code is amended to read:

6 1102.5. (a) An employer may not make, adopt, or enforce
7 any rule, regulation, or policy preventing an employee from
8 disclosing information to a government or law enforcement
9 agency, where the employee has reasonable cause to believe that
10 the information discloses a violation of state or federal statute, or
11 a violation or noncompliance with a state or federal rule or
12 regulation.

13 (b) An employer may not retaliate against an employee for
14 disclosing information to a government or law enforcement
15 agency, where the employee has reasonable cause to believe that
16 the information discloses a violation of state or federal statute, or
17 a violation or noncompliance with a state or federal rule or
18 regulation.

19 (c) An employer may not retaliate against an employee for
20 refusing to participate in an activity that would result in a violation
21 of state or federal statute, or a violation or noncompliance with a
22 state or federal rule or regulation.

23 (d) An employer may not retaliate against an employee for
24 having exercised his or her rights under subdivision (a), (b), or (c)
25 in any former employment.

26 (e) A report made by an employee of a government agency to
27 his or her employer is a disclosure of information to a government
28 or law enforcement agency pursuant to subdivisions (a) and (b).

29 (f) In addition to other penalties, an employer that is a
30 corporation or limited liability company is liable for a civil penalty
31 not exceeding ten thousand dollars (\$10,000) for each violation of
32 this section.

33 (g) This section does not apply to rules, regulations, or policies
34 which implement, or to actions by employers against employees
35 who violate, the confidentiality of the lawyer-client privilege of
36 Article 3 (commencing with Section 950), the physician-patient
37 privilege of Article 6 (commencing with Section 990) of Chapter
38 4 of Division 8 of the Evidence Code, or trade secret information.

39 SEC. 3. Section 1102.6 is added to the Labor Code, to read:

1 1102.6. In a civil action or administrative proceeding brought
2 pursuant to Section 1102.5, once it has been demonstrated by a
3 preponderance of the evidence that an activity proscribed by
4 Section 1102.5 was a contributing factor in the alleged prohibited
5 action against the employee, the employer shall have the burden
6 of proof to demonstrate by clear and convincing evidence that the
7 alleged action would have occurred for legitimate, independent
8 reasons even if the employee had not engaged in activities
9 protected by Section 1102.5.

10 SEC. 4. Section 1102.7 is added to the Labor Code, to read:

11 1102.7. (a) The office of the Attorney General shall maintain
12 a whistleblower hotline to receive calls from persons who have
13 information regarding possible violations of state or federal
14 statutes, rules, or regulations, or violations of fiduciary
15 responsibility by a corporation or limited liability company to its
16 shareholders, investors, or employees.

17 (b) The Attorney General shall refer calls received on the
18 whistleblower hotline to the appropriate government authority for
19 review and possible investigation.

20 (c) During the initial review of a call received pursuant to
21 subdivision (a), the Attorney General or appropriate government
22 agency shall hold in confidence information disclosed through the
23 whistleblower hotline, including the identity of the caller
24 disclosing the information and the employer identified by the
25 caller.

26 (d) A call made to the whistleblower hotline pursuant to
27 subdivision (a) or its referral to an appropriate agency under
28 subdivision (b) may not be the sole basis for a time period under
29 a statute of limitation to commence. This section does not change
30 existing law relating to statutes of limitation.

31 SEC. 5. Section 1102.8 is added to the Labor Code, to read:

32 1102.8. (a) An employer shall prominently display in
33 lettering larger than size 14 pica type a list of employees' rights and
34 responsibilities under the whistleblower laws, including the
35 telephone number of the whistleblower hotline described in
36 Section 1102.7.

37 (b) *Any state agency required to post a notice pursuant to*
38 *Section 8548.2 of the Government Code or subdivision (b) of*
39 *Section 6128 of the Penal Code shall be deemed in compliance*
40 *with the posting requirement set forth in subdivision (a) if the*

1 notice posted pursuant to Section 8548.2 of the Government Code
2 or subdivision (b) of Section 6128 of the Penal Code also contains
3 the whistleblower hotline number described in Section 1102.7.

4 ~~SEC. 6. Section 1102.9 is added to the Labor Code, to read:~~

5 ~~1102.9. (a) A corporation or limited liability company is~~
6 ~~liable for a civil penalty in an amount not exceeding one million~~
7 ~~dollars (\$1,000,000) if that corporation or limited liability~~
8 ~~company does both of the following:~~

9 ~~(1) Has actual knowledge that the corporation or limited~~
10 ~~liability company, or an officer, director, manager, or agent of the~~
11 ~~corporation, or member of the limited liability company is doing~~
12 ~~any of the following:~~

13 ~~(A) Is making, publishing, or posting or has made, published,~~
14 ~~or posted either generally or privately to the shareholders or other~~
15 ~~persons either of the following:~~

16 ~~(i) An oral, written, or electronically transmitted report,~~
17 ~~exhibit, statement of its affairs or pecuniary condition or notice~~
18 ~~containing a material statement or omission which is false and~~
19 ~~intended to give the shares of stock in the corporation or limited~~
20 ~~liability company a greater or a less apparent market value than~~
21 ~~they really possess.~~

22 ~~(ii) An oral, written, or electronically transmitted report,~~
23 ~~prospectus, account statement of operations, values, business,~~
24 ~~profits, expenditures or prospectus that is false and intended to~~
25 ~~give the shares of stock in the corporation or limited liability~~
26 ~~company a greater or a less apparent market value than they really~~
27 ~~possess.~~

28 ~~(B) Is refusing or has refused to make any book entry or post~~
29 ~~any notice required by law in the manner required by law.~~

30 ~~(C) Is misstating or concealing or has misstated or concealed~~
31 ~~from a regulatory body material facts in order to deceive a~~
32 ~~regulatory body so as to avoid a statutory or regulatory duty, or to~~
33 ~~avoid a statutory or regulatory limit or prohibition.~~

34 ~~(2) Within 15 days after the actual knowledge is acquired,~~
35 ~~knowingly fails to do both of the following:~~

36 ~~(A) Inform the Attorney General or appropriate government~~
37 ~~agency in writing, unless the corporation or limited liability~~
38 ~~company has actual knowledge that the Attorney General or~~
39 ~~appropriate government agency has been informed.~~

~~(B) Warn its affected shareholders and investors in writing, unless the corporation or limited liability company has actual knowledge that the shareholders and investors have been warned.~~

~~(b) The requirement for disclosure is not applicable if the action taken or about to be taken by the corporation or limited liability company, or by an officer, director, manager, or agent of the corporation or member of the limited liability company under paragraph (1) of subdivision (a) is abated within the time prescribed for reporting, unless the appropriate government agency nonetheless requires disclosure by regulation.~~

~~(c) If the action reported in a written notice received by the Attorney General pursuant to this section implicates the government authority of an agency other than the Attorney General, the Attorney General shall promptly forward the written notice to that agency.~~

~~(d) If the Attorney General was not notified pursuant to subparagraph (A) of paragraph (2) of subdivision (a), but the corporation, limited liability company, officer or director of the corporation, member of the limited liability company, manager, or agent reasonably and in good faith believed that they were complying with the notification requirements of this section by notifying a government agency listed in paragraph (4) of subdivision (e), no penalties shall apply.~~

~~(e) For purposes of this section:~~

~~(1) “Manager” means a person having both of the following:~~

~~(A) Management authority over a business entity.~~

~~(B) Significant responsibility for an aspect of a business that includes actual authority for the financial operations or financial transactions of the business.~~

~~(2) “Shareholder or investor” means a person or entity that is a shareholder of the corporation or member of the limited liability company or who holds any security or equity interest in the corporation or limited liability company at the time the disclosure is required pursuant to subparagraph (B) of paragraph (2) of subdivision (a).~~

~~(3) “Warn its affected shareholders and investors” means to give sufficient description of an action taken or about to be taken that would constitute acts or omissions as described in paragraph (1) of subdivision (a).~~

(4) ~~“Appropriate government agency” means an agency on the following list that has regulatory authority with respect to the financial operations of a corporation or limited liability company:~~

~~(A) Department of Corporations.~~

~~(B) Department of Insurance.~~

~~(C) Department of Financial Institutions.~~

~~(D) United States Securities and Exchange Commission.~~

~~(E) Department of Managed Care.~~

~~(f) This section applies to corporations and limited liability companies that issue stocks or other securities that are required to be registered with the federal Securities and Exchange Commission and are traded on a stock exchange.~~

~~(g) An action pursuant to this section may be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.~~

SEC. 7. Section 1106 of the Labor Code is amended to read:

1106. For purposes of Sections 1102.5, 1102.6, 1102.7, 1102.8, ~~H03~~, 1104, and 1105, “employee” includes, but is not limited to, any individual employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CORRECTIONS

Text — Pages 4 and 7.